PEMBINAAN MASYULI SDN BHD

v.

MOW SENG HOUSING & LAND DEVELOPMENT SDN BHD

COURT OF APPEAL, KUALA LUMPUR
SITI NORMA YAAKOB JCA
MAHADEV SHANKAR JCA
DENIS ONG JCA
[APPEAL NO: W-02-117-1995]
20 NOVEMBER 1997

CIVIL PROCEDURE: *Service - Service on corporations - Writ of summons and statement of claim - Service effected at principal place of business and not at registered office - Whether proper - Order 62 r. 4 Rules of the High Court 1980 - Whether complied with*

The appellants and the respondents were contractors and housing developers respectively. The appellants had sued the respondents for moneys owed in respect of the construction of certain low-cost houses, and had obtained against the latter a judgment in default of appearance. The facts showed however that the appellants, in effecting the service of the writ of summons and statement of claim, had not served the same at the respondents' registered office in Kuala Lumpur, but served it instead at the respondents' sales office in Seremban, Negeri Sembilan. Such service notwithstanding, the respondents' clerk at the said sales office ('Lee') accepted the service of the writ and affixed the respondents' seal thereto. It was also evident that at the material time a board meeting of the respondents was being held at the said sales office.

The respondents sought to have the judgment in default set aside, arguing in the court below that the judgment was irregularly obtained as the service of the writ at their sales office was irregular, having contravened O. 62 r. 4(1) Rules of the High Court 1980 ('the RHC'). It was the respondents' contention that it was improper of the appellants to have served the writ at their sales office in Seremban, and that Lee, in any case, was not a principal officer of the respondents and could not therefore lawfully accept the service. The senior assistant registrar, and subsequently the learned judge, acceded to the respondents' arguments, and consequently set aside the judgment in default. The appellants appealed.

Held:
Per Siti Norma Yaakob JCA

[1] There was no basis for the objection by the respondents as para (b) of r. 4(1) of O. 62 RHC allows service of process to be effected at any principal office of a party if it has more than one. The fact that a board meeting was held at the sales office could only reinforce the point that the premises was another of the respondents' principal offices used by them to conduct their business.

[2] Lee could clearly accept the service of the writ on behalf of the respondents. The fact that Lee had affixed the respondents' seal to the writ presupposed that she had authority to do so and there was no averment from the respondents to the contrary. Since a corporation conducts its business through its seal, an endorsement of it is evidence that the corporation is a willing and interested party in the transaction that it proposes to partake.

[2a] Lee had all the trappings of an officer who could conduct the business of the respondents at their sales office in as much as a secretary could, and from her conduct she must have been imbued with the necessary authority to use the respondents' seal as and when such use was required. The respondents could not disclaim any responsibility for the use of their seal on the ground that a clerk could not be equated with a principal officer. Lee by conduct had held herself out to be a principal officer of the respondents.

[3] The judgment in default of appearance dated 11 June 1993 herein, in the circumstances, had been regularly obtained.

[Appeal allowed.]

*[**Bahasa Malaysia** Translation Of Headnotes]*

Perayu dan responden masing-masing adalah kontraktor dan pemaju perumahan. Perayu telah mendakwa responden berhubung wang yang terhutang ekoran pembinaan beberapa unit rumah murah, dan telah memperolehi penghakiman ingkar ketidakhadiran. Fakta bagaimanapun menunjukkan bahawa perayu, dalam membuat penyerahan writ, tidak menyerahkannya di pejabat berdaftar responden di Kuala Lumpur, tetapi sebaliknya menyerahkannya di pejabat jualan responden di Seremban, Negeri Sembilan. Walaupun demikian, kerani responden di pejabat jualan tersebut ('Lee') telah menerima penyerahan writ serta menyempurnakan seal syarikat ke atasnya. Tidak dinafikan bahawa pada waktu material satu mesyuarat Lembaga Pengarah responden sedang berlangsung di pejabat jualan berkenaan.

Responden memohon untuk mengenepikan penghakiman ingkar, dan berhujah di mahkamah di bawah bahawa penghakiman berkenaan adalah tidak teratur oleh kerana penyerahan writ di pejabat jualan mereka di sini tidak teratur dan menyanggah A. 62 k. 4(1) Kaedah-kaedah Mahkamah Tinggi 1980 ('KMT'). Ianya menjadi hujah responden bahawa adalah tidak teratur bagi perayu untuk menyerahkan writ di pejabat jualan mereka di Seremban, dan walau apa pun, Lee bukanlah seorang pegawai utama responden yang layak di sisi undang-undang untuk menerima penyerahan. Penolong Kanan Pendaftar yang bijaksana, dan kemudiannya yang arif hakim, menyetujui hujah responden dan berikutnya mengenepikan penghakiman ingkar. Perayu merayu.

Diputuskan:
Oleh Siti Norma Yaakob HMR

[1] Bantahan responden tidak berasas oleh kerana perenggan (b) A. 62 k. 4(1) membenarkan penyerahan proses dibuat di mana-mana pejabat utama responden jika mereka mempunyai lebih dari satu pejabat utama. Fakta bahawa mesyuarat Lembaga Pengarah telah diadakan di pejabat jualan hanya menguatkan pendapat bahawa premis tersebut memang digunakan oleh responden sebagai pejabat utama bagi mengendalikan urusan mereka.

[2] Lee jelas boleh menerima penyerahan writ bagi pihak responden. Fakta bahawa Lee telah menyempurnakan seal ke atas writ menunjukkan bahawa beliau mempunyai autoriti untuk berbuat demikian dan tidak terdapat pengataan sebaliknya dari pihak responden. Oleh kerana sesebuah syarikat itu menjalankan urusannya melalui sealnya, suatu endorsmen seal yang sedemikian menjadi keterangan bahawa syarikat berkenaan menjadi pihak yang rela dan berminat dalam transaksi yang akan dimasukinya.

[2a] Lee menonjolkan gambaran yang cukup sebagai seorang pegawai yang layak untuk menjalankan urusan responden di pejabat jualan tersebut sebagaimana layaknya seorang setiausaha dan dari tingkahlakunya beliau kelihatan diberikan segala autoriti yang perlu bagi menggunakan seal responden bila dan di mana penggunaan sedemikian diperlukan. Responden tidak boleh sekarang ini menolak tanggungjawab atas kepenggunaan seal atas alasan bahawa seorang kerani tidak boleh disamakan dengan seorang pegawai utama. Lee melalui tingkahlakunya telah menonjolkan dirinya sebagai seorang pegawai utama responden.

[3] Penghakiman ingkar bertarikh 11 Jun 1993 di sini, dalam halkeadaan yang wujud, telah diperolehi dengan teratur.

[Rayuan ditolak.]

Legislation referred to:
Rules of the High Court 1980, O. 62 r. 4(1)

For the appellant - Manjit Singh Saini; M/s Harun Idris, Yeoh & Partners
For the respondent - M Manoharan; M/s Karpal Singh & Co

[Appeal from High Court, Kuala Lumpur; Civil Case No: S2-22-176-93]

Reported by Nik Aras Yusoff

JUDGMENT

Siti Norma Yaakob JCA:

The only issue raised in this appeal is whether the appellants (plaintiffs in the court below) had adopted the proper procedure when they chose to serve a copy of their writ of summons and statement of claim on the respondents personally at the latter's principal place of business and not at their registered office. This issue arose when the respondents questioned the validity of a judgment in default of appearance dated 11 June 1993 entered against them on the ground that the judgment had been irregularly obtained by the appellants.

The appellants are contractors and in October 1989, pursuant to an oral agreement reached with the respondents, who are housing developers, they undertook to construct 172 units of low cost houses, this being the first phase of the respondents' housing project known as Taman Pelangi in Seremban.

On 24 December 1992, the appellants' solicitors demanded payment of RM145,934.63 from the respondents being progress payments outstanding after credit was given for a payment made and the 5% retention sum provided by the respondents. When the respondents failed to meet the demand, the appellants sued them on 20 March 1993 at the High Court in Kuala Lumpur for the sum due.

Although the writ of summons bears the address of the respondents' registered office in Kuala Lumpur, service of a copy of it and the statement of claim was however effected at the respondents' sales office in Seremban, Negeri Sembilan on 10 April 1993 at 10am. This is not disputed and neither is the fact that one, Lee Peck Ting, the respondents' clerk accepted service of the documents on behalf of the respondents.

The respondents did not enter any appearance despite being warned by letter dated 27 April 1993 from the appellants' solicitors of the appellants' intention to enter judgment in default and following the filing of a Certificate of Non-Appearance by the appellants on 11 June 1993, judgment in default of appearance was entered against the respondents the same day.

Seven months later on 13 January 1994, the respondents applied to have the judgment set aside on the ground that service of the writ and statement of claim was irregular for non-compliance of O. 62 r. 4(1) of the Rules of the High Court 1980 (the Rules). The Deputy Registrar who heard the application agreed with the respondents and on 7 March 1994, allowed the application and set aside the judgment in default.

Dissatisfied, the appellants appealed to the judge in chambers and on 9 September 1994 the learned judge dismissed the appeal and confirmed the decision of the Deputy Registrar. As there is no written judgment, we are in the dark as to what had prompted the learned judge to dismiss the appeal particularly when he had taken time to consider his judgment.

The appellants then sought and obtained the leave of this court to argue the matter further and it was under these circumstances that we heard the appeal and allowed it and we now give our reasons for having decided so.

Order 62 r. 4(1)(a),(b) and (c) of the Rules prescribes the three alternatives under which service of a writ can be effected on a local corporation as opposed to a foreign one and in substance the rule states as follows:

> Service on corporations (O. 62 r. 4)
>
> 4(1) Where an action is against a corporation, the writ may be served -
>
> (a) by leaving a copy of it at the registered office (if any) of the corporation; or
>
> (b) by sending a copy of it by registered post addressed to the corporation at the office, or, if there be more offices than one at the principal office of the corporation, whether such office be situated within Malaysia or elsewhere; or
>
> (c) by handing a copy of it to the secretary or to any director or other principal officer of the corporation.

In the court below, the respondent objected to the fact that the writ and statement of claim was not served at their registered office in Kuala Lumpur but at their sales office in Seremban.

We see no basis for such an objection as para. (b) of r. 4(1), allows service of process to be effected at any principal office of the respondent if they have more than one. In this case the respondents' registered office, as stated in the writ itself is at Suite 4.02, Tingkat 4, Bangunan Yayasan Selangor, 55100 Kuala Lumpur. They also maintained another office at the material time in Seremban at No. 39, Tingkat 1, Jalan Yam Tuan, 70000 Seremban, Negeri Sembilan, this being their sales office in respect of the construction of the low cost houses that they had undertaken for the appellants.

There is an admission by one of the respondents' Directors in an affidavit affirmed on 12 January 1994 that at 3pm on 10 April 1993 (the same afternoon the writ and statement of claim was served), the respondents held a Board meeting at the premises attended by a representative of the appellants to discuss the amount due to the appellants. The fact that such a Board meeting was held at the sales office reinforces our finding that the premises was another of the respondents' principal office used by them to conduct their business.

Before us that issue was not touched by the respondents as they confined their arguments to the fact that Lee Peck Ting, who accepted service does not fall within one of the three categories of officers identified by para. (c) of r. 4(1) who can lawfully accept service on their behalf.

As Lee Peck Ting was not a Secretary or a Director of the respondents the issue raised was whether she can, as a clerk, be described as a principal officer of the respondents to qualify her to accept service on behalf of the respondents. We say she can for the following reason.

In her affidavit affirmed on 19 February 1994, she had admitted that she had received a copy of the writ and statement of claim and had signed at the back of it. That signed copy as exhibited shows her signature immediately after the endorsement of the respondents' seal. Although she made no mention in her affidavit who had affixed the respondents' seal we have no doubt she had done so. This presupposes that she had the authority to do so and there is no averment from any of the respondents' Directors who had affirmed affidavits to the contrary. Since a corporation conducts its business through its seal, an endorsement of it is evidence that the corporation is a willing and interested party in the transaction that it proposes to partake. Lee Peck Ting must have had possession of the respondents' seal and with it the authority to use it. That must be the only explanation as to her conduct in affixing the seal. Under such circumstances we considered that she had all the trappings of an officer who can conduct the business of the respondents at their sales office in as much as a Secretary can and from her conduct she must have been imbued with the necessary authority to use the respondents' seal as and when such use was required. That use presented itself when she was served with the appellants' writ and statement of claim. Under these circumstances, the respondents cannot now disclaim any responsibility for the use of their seal on the ground that a clerk cannot be equated as a principal officer. On the facts of this appeal we consider that Lee Peck Ting who was only a clerk had by her own conduct held herself out as one who can be described as a principal officer of the respondents.

Since there were no issues raised as to whether the respondents had any defence on the merits, we had for the reasons that we had given made a finding that the judgment in default of appearance dated 11 June 1993 had been regularly obtained. In allowing the appeal we also ordered that the respondents bear the costs of this appeal as well as the costs in the court below and lastly the deposit made by the appellants be refunded to them.

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